

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Subj: SENIOR OFFICIAL CASE 201300798; ALLEGED MISCONDUCT BY
RADM PAUL V. SHEBALIN, USNR (RET), PROFESSOR OF THE
PRACTICE OF SYSTEMS ENGINEERING AND DIRECTOR, WAYNE E.
MEYER INSTITUTE OF SYSTEMS ENGINEERING, DEPARTMENT OF
SYSTEMS ENGINEERING, GRADUATE SCHOOL OF ENGINEERING AND
APPLIED SCIENCES, NAVAL POSTGRADUATE SCHOOL**




**J. F. CALDWELL, JR.
VADM, USN**

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Office of the Naval Inspector General**Case Number: 201300798****Report of Investigation****26 Nov 2013**

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Preliminary Statement

1. On November 21, 2012, the Naval Inspector General issued two Reports of Investigation (ROIs) documenting its investigation of allegations of misconduct by Vice Admiral Daniel T. Oliver, USN (Ret), Naval Postgraduate School (NPS) President (Number 201103025), and Dr. Leonard A. Ferrari, NPS Executive Vice President and Provost (Number 201203847).

2. While investigating the allegations of misconduct by President Oliver and Dr. Ferrari, we discovered separate instances of potential misconduct by various NPS faculty and staff members. One area of potential misconduct that we identified was that various faculty and staff members at NPS, including RADM Shebalin, a civilian full time Department of the Navy (DON) employee, solicited the NPS Foundation (Foundation) and accepted gifts on behalf of the U.S. Navy in violation of the applicable gift acceptance statute and regulations. In most instances the gifts were checks to reimburse faculty and staff for expenses that they incurred for events that were related to the operation of NPS. In other instances, the Foundation made payments to vendors for goods and services, such as meals, that NPS faculty and staff members arranged and that were related to the operation of NPS.

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3. The Foundation is a non-profit charitable organization whose primary mission is to support NPS.¹ The Foundation supports NPS through gifts of money and property.

4. As discussed below, the Chief of Naval Operations (CNO) delegated gift acceptance authority to the President, NPS, for gifts of \$12,000 or less. No one else at NPS has authority to accept gifts for the Navy. Gifts greater than \$12,000 can only be accepted by the Secretary of the Navy, CNO, Vice Chief of Naval Operations (VCNO), and Director of Navy Staff and other very senior officials.

5. The Assistant for Administration, Under Secretary of the Navy (AA/USN), deposits properly accepted monetary gifts into the Navy General Gift Fund. AA/USN, in turn, distributes the funds to NPS. At NPS, the funds are placed in the President's Gift Fund account.

6. The NPS Comptroller maintains the President's Gift Fund account. Within the President's Gift Fund, there are accounts for various positions and purposes. These accounts enable the Foundation or other donors to make directed (earmarked) gifts for specific areas of research or study or to a specified school, department, institute, center, academic group, or faculty or staff member.

7. We formulated the following allegation:

Allegation: That RADM Paul V. Shebalin improperly solicited and accepted gifts from the Foundation on behalf of the U.S. Navy in violation of 10 United States Code (USC) 2601 and its implementing regulations.

Conclusion: The allegation is substantiated.

8. On November 14, 2013, we informed RADM Shebalin of our tentative conclusion that he improperly solicited and accepted

¹ The Foundation is recognized as exempt from federal tax under section 501(c)(3) of the Internal Revenue Code.

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gifts from the Foundation on behalf of the Navy. We provided RADM Shebalin the opportunity to comment on our tentative conclusion. In his response, dated November 20, 2013, RADM Shebalin stated that he had no comments regarding our tentative conclusion.

Background

9. RADM Shebalin is a Professor of The Practice of Systems Engineering and Director, Wayne E. Meyer Institute of Systems Engineering (Meyer Institute), Department Of Systems Engineering, Graduate School of Engineering and Applied Sciences, NPS. RADM Shebalin has been at NPS since 2003 and became the Director of the Meyer Institute in 2007. He retired from the Naval Reserve in 2007.

10. The Meyer Institute is one of four NPS institutes. The Meyer Institute web-page lists the institute's mission and goals:

- Establishes and conducts NPS-wide, interdisciplinary research programs for the Navy, DoD and other National Security customers.
- Fosters and encourages NPS faculty and students to apply their talents to answering the high-priority questions in defense systems science, technology, and engineering.
- Supports, facilitates and enables affiliated NPS faculty, visiting and adjunct faculty, and students to collaborate and conduct sponsored, interdisciplinary research and studies.
- Publicizes and shares the results of Meyer Institute-affiliated research.
- Provides a conduit to NPS faculty and students for defense contractor sponsored research.
- Supports the assigned Chair Professors - enables the Warfare Chairs and PEO-, Industry-, and other-sponsored Chair Professors to carry out their academic responsibilities

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11. During our investigation of President Oliver and Dr. Ferrari evidence gathered established that the Foundation also held an internal account for the Meyer Institute. The Foundation records established that Lockheed Martin donated money to the Foundation to fund the Meyer Institute account. The Foundation records were incomplete and we were unable to determine when the account was first established.

12. Foundation records include a letter dated July 22, 2009, in which Lockheed Martin donated \$10,000 to the Foundation for the Meyer Institute. The letter stated that the money was "for your appropriate use at the Wayne Meyer Institute at the Naval Postgraduate School." In 2010 and 2011, Lockheed Martin donated \$5,000 each year.

13. Foundation records establish that the Foundation reimbursed RADM Shebalin and faculty and staff members attached to the Meyer Institute with funds from the Meyer Institute account for various purchases. The records also establish that the Foundation made payments to vendors for the Meyer Institute with funds from the Meyer Institute account. The Foundation also paid honorariums to guests of the Meyer Institute.

Findings of Fact

14. On February 12, 2012, RADM Shebalin testified that if he or someone associated with the Meyer Institute purchased an item or incurred an expense related to the Institute, he or one of his deputies signed a reimbursement form that was delivered to the Foundation. Attached to the reimbursement forms were receipts for the purchases or expenses. Thereafter, the Foundation issued a check to RADM Shebalin or the person who had made the purchase or made a payment to a vendor.²

15. In 2010 and 2011, the Foundation issued a total of 53 checks to reimburse RADM Shebalin and other Meyer Institute faculty and staff members. Specifically, the Foundation issued

² RADM Shebalin is the only person associated with the Meyer Institute that we investigated. We limited our investigation to him because he is the Director.

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seven checks to RADM Shebalin. During that period, in addition to reimbursing RADM Shebalin and faculty and staff, the Foundation made 31 payments to Morale Welfare and Recreation (MWR) or vendors for goods or services for the Meyer Institute. In 2009, the Foundation made 50 reimbursements or payments to MWR or vendors.³ It also issued five honorariums to guests of the Meyer Institute. The aggregate amount for reimbursements, payments, and honorariums during the 3 years was greater than \$32,000.

16. RADM Shebalin testified that he believed that he was authorized to request reimbursements from the Foundation or have it pay vendors from its Meyer Institute account. He said that when he became the Director of the Meyer Institute in 2007, the outgoing Director told him about the Meyer Institute account at the Foundation and explained that the Foundation reimbursed Meyer Institute personnel for expenses and made payments to vendors that were related to the Meyer Institute's mission. He said that then-financial manager for the Meyer Institute also told him about the account at the Foundation and that it was used to support institute-related expenses.

17. RADM Shebalin said that each year the Foundation's Executive Director, RADM Merrill Ruck, USN (Ret), informed him when Lockheed Martin donated money. He testified that RADM Ruck contacted him by phone or e-mail and told him, "Hey, a donation has come in."

18. RADM Shebalin testified that the criteria he applied for using Meyer Institute account funds was "we had the funds. It was for a Meyer Institute mission item, and we wanted to get them in fairly quickly." He also stated:

It's under the mission. We had the funds with the foundation and they said, "This is how much we have for you in the foundation funds." It seemed like a good use of the funds.

³ For 2009 the Foundation records did not distinguish between a reimbursement check to a Meyer Institute faculty or staff member and a payment to a vendor.

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19. RADM Shebalin testified that no one recognized any personal gain.⁴ He said that all requests to the Foundation for reimbursements were supported with receipts. Foundation records include receipts for all expenditures from the Meyer Institute account.

20. The Foundation issued reimbursement checks to the Meyer Institute personnel or made payments to MWR and vendors for the following expenses:

- food at conferences
- dinners at restaurants, including alcoholic and non-alcoholic beverages
- \$100 gift certificate for a departing staff member
- replacement parts for a Lego robot
- conference fees
- travel expenses for students
- plaques and commemorative coins
- get-well cards

21. RADM Shebalin acknowledged that some of the expenses he approved were for items which he believed appropriated funds could not be used to purchase. The items he believed could not be purchased with appropriated funds included food, graduate receptions, get-well cards, awards, and commemorative coins.

22. In a letter to President Oliver, dated March 2, 2012, the Foundation offered a \$9,000 gift to NPS. The offer specified that the \$9,000 was provided to "establish a fund" with the NPS Comptroller's office. It further stated that the purpose of the gift was to support "Meyer Institute activities not officially funded" and that the "Meyer Institute Fund may be drawn upon

⁴ We found no evidence that any purchase was for private use, all expenses incurred were for the benefit of NPS.

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under the guidance of the director, currently Dr. Paul Shebalin." President Oliver subsequently accepted the gift on behalf of the Navy.

Applicable Standards

23. 10 USC 2601, General Gift Funds, grants the Secretary of Defense, the Secretary of the Navy, and other Service Secretaries authority to "accept, hold, administer, and spend any gift. . . ." This statute is one of several that authorize the acceptance of gifts to the DON. Of particular relevance to this inquiry are 10 USC 2601 requirements to deposit monetary gifts in the U.S. Treasury, to avoid accepting gifts that would reflect unfavorably on the Department, and to avoid accepting gifts that would compromise the integrity or appearance of integrity of any DON program.

24. While none of the various Department of the Navy gift statutes mention solicitation, a January 19, 2001, opinion of the Department of Justice Office of Legal Counsel states that similarly worded statutes authorizing the acceptance of gifts for itself (28 USC 524(d)(1)), the Office of Government Ethics (5 USC App 403(b)), the Department of State (22 USC 2697(a)), the Department of Commerce (15 USC 1522), and the Department of Treasury (31 USC 321(d)(1)) include the implicit authority to solicit gifts.

25. Volume 12, Chapter 30, Operation and Use of General Gift Funds, of the DoD Financial Management Regulation sets forth overall policy for acceptance of gifts under 10 USC 2601. Paragraph 300502 states:

Department of Defense personnel shall not solicit, fundraise for, or otherwise request or encourage the offer of a gift. Acceptance Authorities shall not accept gifts offered contrary to this policy.

26. SECNAVINST 4001.2J sets forth SECNAV's policy and procedures for acceptance of gifts, including money and personal and real property. The Instruction defines money as cash, checks, or other forms of negotiable instruments.

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27. The SECNAV Instruction authorizes CNO, VCNO, and Director of Navy Staff and other very senior officials to accept gifts subject to certain limitations. It permits the CNO to delegate certain gift acceptance authority to subordinates in his/her chain-of-command and establishes rules that apply to any Navy official in the gift acceptance process.

28. Paragraph 6b of the SECNAV Instruction prohibits solicitation by DON personnel unless it is "authorized by SECNAV." Paragraph 6g recognizes the value of foundations and other non-profit organizations in providing support to the Department.

29. Paragraph 7 provides instructions for processing gifts. For example, it requires donors to make checks payable to the DON and reiterates the statutory requirement that all gifts of money be deposited into the Treasury. The Instruction mandates that prospective donors be "advised to submit gift offers in writing explicitly specifying any conditions associated with gift acceptance." The Instruction also provides that, with limited exceptions for wounded or injured in the line of duty, services may not be accepted as gifts.⁵

30. OPNAVINST 4001.1F promulgates CNO's policies in connection with accepting and processing of gifts flowing from 10 USC 2601 and SECNAVINST 4001.2J. It does not address solicitation. This Instruction grants the NPS President express authority to accept gifts to the Navy of \$12,000 or less.⁶ The Instruction specifies various reporting requirements.

31. Two local instructions, NAVPGSCOLINST 4001.1E and NAVPGSCOLINST 4001.2B, set out further responsibilities and requirements regarding gifts to NPS.

32. Paragraph 5 of NAVPGSCOLINST 4001.1E prohibits solicitation, stating:

⁵ For purposes of this report, gift of services exemptions do not apply.

⁶ No other personnel at NPS are authorized to accept gifts to the Navy for any amount. Prior to 2010, the NPS President's authority to accept gifts was \$10,000 or less.

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NPS employees will not directly or indirectly solicit gifts for themselves, the Naval Postgraduate School, or for the Navy under any circumstances. Gifts offered as a result of solicitation will not be accepted. NPS employees must not refer a potential donor to any non-Federal entity.

33. Paragraph 6, Gifts from Foundations, contains language about gifts from foundations that is similar to the language in paragraph 6g of the SECNAV instruction.

34. Paragraph 7, Reimbursements, states:

NPS employees may not accept reimbursement from a non-Federal entity for expenses that support the school or its mission.⁷ Should a non-Federal entity offer to support a school related function or event, then that offer must be processed in accordance with this instruction.

35. NAVPGSCOLINST 4001.2B defines the President's Gift Fund as:

Composed of donations of funds that are available for expenditures for any purpose within the mission of the NPS and at the discretion of the President.

Analysis

36. We concluded that RADM Shebalin improperly solicited or accepted gifts from the Foundation on behalf of the US Navy in violation of 10 USC 2601 and its implementing regulations.

37. As a preliminary matter, we note that if the Foundation intended to support RADM Shebalin and the Meyer Institute as it did, it should have formally offered the gift to NPS and specified that the purpose of the gift was to support the Meyer Institute as it did in March 2012.

38. We determined that each time RADM Shebalin requested reimbursement, the Foundation paid an honorarium, or the

⁷ The Foundation is a non-Federal entity.

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Foundation made a payment to MWR or a vendor for goods and services incurred by Meyer Institute personnel, RADM Shebalin improperly solicited a gift from the Foundation. Each time he accepted a reimbursement check or the Foundation issued an honorarium or made a payment to MWR or a vendor RADM Shebalin improperly accepted a gift on behalf of the Navy.

39. We determined that RADM Shebalin did not intend to violate the rules regarding gifts. Rather, we found that he was ignorant of the rules. We further found RADM Shebalin's ignorance of the gift rules not unreasonable based on the facts before him. Specifically, RADM Shebalin relied on the information he received from his predecessor when he become the Director of the Meyer Institute. RADM Shebalin simply continued an improper process that was then in place.

40. We noted that RADM Shebalin testified that he used the Meyer Institute account funds from the Foundation to pay for items for which appropriated funds could not be used. We did not find this fact to be evidence that he believed that using the Meyer Institute account funds was improper. Rather, we concluded that RADM Shebalin simply used a funding source that was made available to him.

41. We concluded that RADM Shebalin realized no personal gain from Meyer Institute account and that the funds were used to support the Meyer Institute. The lack of personal gain is mitigating.

42. Nonetheless, we concluded that RADM Shebalin improperly solicited and accepted gifts from the Foundation on behalf of the US Navy.

Conclusion

43. The allegation is substantiated.

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